a summons to mortgagor in respect thereof. This summons was not served.

On the 4th day of July, 1949, the Bailiff of the Magistrates' Court, Penang, in execution of a judgment obtained by the first defendant against one Mastan Maricar seized the two lighters Nos. P.C. 466 and P.C. 349 and sold the same on the 11th day of July, 1949, at a public auction as the property of the said Mastan Maricar and delivered them to the second defendant, the highest bidder at the auction, as the purchaser. The Bailiff gave evidence that the first defendant personally pointed out the two lighters in question and informed him that they were the property of Mastan Maricar, against whom he had obtained judgment.

On these facts the plaintiff submits that as mortgagee he has the right to sue for the return of the property and that the registration of the Mortgage Deed at the Harbour Master's Office precludes the defendants saying that they have no notice of it.

Mr. C. O. Lim resists this claim on the ground that the mortgagee was not the owner and therefore not the proper person to sue in this matter, and further that the second defendant acquired a good title by the sale by the Sheriff. He has also in the pleadings alleged that there is no privity of contract between the second defendant and the plaintiff and therefore no cause of action arises.

As this is a claim in tort and not in contract the question of privity of contract between the parties does not arise. The two points to be considered in this matter therefore are first, whether the mortgagee has the right to sue and secondly, whether the second defendant acquired a good title by purchasing at the Sheriff's sale.

It is well settled law that a mortgagee has the right to maintain an action in relation to the mortgaged property provided he has the right to take possession. In this case the plaintiff's right to possession arose under the mortgage immediately payment of the instalments by the mortgagor was overdue.

Mr. Lim has submitted that the action of the mortgagee in issuing a summons to the mortgagor for payment of the instalments amounted to waiver of his right to take possession. It is clear, however, that the issue of the summons in no way affected the mortgagee's right to possession; he could still have exercised it notwithstanding the summons. I find therefore that the mortgagee was a person with the right to possession and as such is entitled to maintain this action.

The law on the second point seems equally clear. In *Farrant v. Thompson*[1] it was held that where the goods sold by the Sheriff were those of a stranger and not of the party against whom the execution issued the owner could recover even against a *bona fide* purchaser for value. Mr. Lim objected that this authority only applied to an owner and not to a mortgagee. There is no substance in this contention. Legal title to the goods was conveyed to the mortgagee by the mortgage and although the right to redeem which resides in the mortgagor would also entitle him to maintain an action in relation to the property the mortgagee is nevertheless the legal owner and an owner within the meaning of the term in this authority.

A purchaser acquires no better title than the seller had and in *Morris v. Salberg*[2] sale by the Sheriff of the goods of a stranger where the endorsement on the writ of execution directed him to levy on those goods was held to be wrongful and to convey no title to them. In the present case the first defendant personally indicated the goods of plaintiff to the Sheriff and as they were not those of the execution debtor the sale was wrongful and passed no title.

I find therefore that the sale of these tongkangs was wrongful and the plaintiff is entitled to damages against the defendants for their conversion.

The tongkangs were sold by public auction and the amount realised must be regarded as their value at the time of the conversion. Tongkang P.C. 349 realised $305/-. But tongkang P.C. 466 was sold together with another for the sum of $375/-. I have no evidence that any difference existed between the two tongkangs, which were sold together and I must assume that they were of equal value, and the value of P.C. 466 is therefore $187.50.

Judgment for the plaintiff for $492.50 and costs.

*Judgment for the plaintiff.*

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## BEH CHANG HIN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Callow, J.) February 11, 1950]

[Alor Star — Criminal Appeal No. 49 of 1949]

*Prohibition of Imports Order, 1946 — Submission of no case to meet — Evidence of accused person given after submission is overruled — Forfeiture of goods — Request of owner of seized goods to be heard before forfeiture is ordered.*

In this case the appellant appealed against the convictions, fines and forfeitures imposed upon him for contravention of section 2 of the Prohibition of Imports Order, 1946. On appeal it was argued inter alia (a) that

if a prima facie case is not made out at the close of the prosecution case the Magistrate must acquit; and that subsequent evidence cannot alter the position. No matter how culpable the defence exposure, if no prima facie case existed at the close of the prosecution any later evidence even amounting to a confession should be disregarded on appeal and an acquittal entered. (b) That the magistrate under the enactment had a discretion as to forfeiture which he must exercise judicially. (c) That the owners of the seized goods should have been heard before the forfeiture of the goods was ordered.

Held, (1) that as section 182 of the Criminal Procedure Code requires the Magistrate to acquit the accused if no prima facie case has been made out by the prosecution, the Court cannot on appeal look at the evidence led by the defence to see whether such evidence supports a conviction and if so refuse to set aside the conviction; (2) that in this case there was sufficient prima facie evidence which made it the duty of the Magistrate to call upon the defence; (3) that the Magistrate had a discretion as to forfeiture which he must exercise judicially; (4) that the owners of the goods should have been given an opportunity to show cause why the vehicle and the articles seized should not be forfeited; (5) that by refusing to hear the owners the Magistrate had not exercised his discretion judicially.

*Cases referred to :—*

(1) *Public Prosecutor v. Chin Yoke* (1939) F.M.S.L.R. 203.

(2) *Rex v. Power* 14 Cr. App. R. 17.

(3) *Tham Chuan Tong and two ors. v. Rex* Penang Criminal Appeal No. 31 of 1946 (unreported).

(4) *Frailey v. Charlton* (1920) 1 K.B. 147.

(5) *Lim Geok Ching and anor. v. Public Prosecutor* (1949) M.L.J. 97.

CRIMINAL APPEAL from the Magistrate's Court, Jitra.

*C. D. D. Hogan* for the appellant.

*C. V. Boyle* for the respondent.

**Callow, J.** : — This is an appeal from the Court of the Magistrate, Alor Star, sitting at Jitra against the convictions, fines and forfeitures imposed on the 6th of August, 1949, for contravention of section 2 of the Prohibition of Imports Order, 1946.

The charges read :—

(1) That you Beh Chang Hin alias Mah Geok Moey s/o Beh Ah Tooi at about 3.45 p.m. on the 23rd day of May 1949 at the Customs Station, Changloon, Kedah, were concerned in attempting to import into Kedah prohibited goods, to wit, articles made wholly or partly of gold to the value of $2,293.00 without an import licence therefor contrary to section 2 of the Prohibition of Imports Order, 1946, and you thereby committed an offence punishable under sections 98 and 91 (a) of Enactment No. 27 (Customs).

(2) That you at about 3.45 p.m. on the 23rd of May, 1949, at the Customs Station, Changloon, Kedah, were concerned in attempting to import into Kedah prohibited goods, to wit, diamond set jewellery to the value of $802.00, without an import licence therefor contrary to section 2 of the Prohibition of Imports Order, 1946, and you thereby committed an offence punishable under sections 98 and 91 (a) of Enactment No. 27 (Customs).

This appeal has been argued at length and occupied over three sitting days of this Court. The first hearing was on the 29th of October, 1949, the second on the 24th of November, 1949, and the third on the 13th of December, 1949. The long intervals were regrettable and due to arranging convenient days for the counsel for the appellant who has had to journey from Penang. It is in every way better to hear an appeal continuously.

Twenty-five grounds of appeal were filed and at the close of his address Mr. Hogan for the appellant summarised his grounds as follows :—

(i) If P-13 rejected then the case for the prosecution must fall to the ground.

(ii) Grounds 3, 4, 5 and 6: Misdirection. Possession did not arise. No evidence of possession by the appellant in prosecution's case. Magistrate should have acquitted under section 173 C.P.C.

(iii) Ground 7: Magistrate bound by Carey J.'s judgment. Exhibit "D".

(iv) Grounds 8, 9 and 10: Articles not within the Proclamation.
Common sense to secret valuable articles.

(v) Ground 11: Grave injustice: Counsel should have been heard. Conviction might have been averted.

(vi) Grounds 12, 13 and 14: Evidence of goldsmith's clerk. Pure guess work. Best evidence should have been called.
Articles should have been proved to be gold. No evidence that witness was expert in diamonds.

(vii) Alternatives: Grounds 16, 17 and 18.
Articles not dutiable.
No intention to evade duty.
Judgment of Carey J. followed and Magistrate was bound by it. He disregarded it.

(viii) Grounds 19 and 20: Only one offence.
Should have been only one penalty.

(ix) Ground 21: First offender. First prosecution of this kind. Maximum fine should not have been imposed.

(x) Grounds 22 and 23: Counsel should have been heard.

(xi) Grounds 24 and 25: Forfeiture not mandatory or compulsory. Discretion not exercised.

The facts of the case are that on the 23rd of May, 1949, the appellant together with Teow Soo Cheng (12 P.W.) arrived in a Hudson Saloon motor car (Exhibit P-2) at the Customs Station Changloon on the Malay-Siam border, having travelled from Haadayai in Siam.

There O.D.O. 1036 Wan Ahmad bin Haji Wan Hamid (2 P.W.) showed the appellant the usual Customs notice (Exhibit P-1) to which the appellant made no declaration.

Then O.D.O. 1008 and other Customs Officers examined the vehicle in the presence of the appellant, and in a cunningly concealed shelf or compartment contructed under the right front mudguard were found at first two packages Exhibit P-4A and P-4B and later a third package (Exhibit P-5). I examined the car;

the hiding place is most cleverly situated and without the most expert search or previous information would escape discovery.

In the package were articles of jewelry of gold and diamonds. The appellant was searched and on his person was found a letter (Exhibit P-9) which reads :—

"Brother Shang Moh,

Yesterday I received a letter from your wife and its contents were noted. She instructed me to hand over the three packets of thing which you put in my place the other day, to brother Geok Moey to take away. I have accordingly done so. When the time comes, please check and receive them. Then inform me so as to console me.

Best wishes.

From Kong Sim

23rd May, 38th Chinese Republican year (1949).

Also give my best regards to your wife and family.'

Mr. Hogan's first contention concerns the list of the articles (Exhibit P-13). This list was prepared by the goldsmith Yee Siak Khoon (8 P.W.) who examined the articles, and is in Chinese. Mr. Hogan complained that the translation of Exhibit P-13 did not correspond with the description of the jewelry before the Court, and if this list is inaccurate it should be struck out thus destroying the case for the prosecution for he argued the list was a vital exhibit. I have examined the articles and compared the list. It is true that item 7 of J-2 in Exhibit P-13 should read a ring with four diamonds and not four diamond rings, also items 9 to 13 should read rings and not earrings, but apart from that there is only very minor mis-discription. The jewelry was all the time before the Court below, and I find no embarrassment was caused to the defence by any minor error of translation from Chinese to English in Exhibit P-13. The appellant enjoyed the aid of Mr. Hogan in the Court below as he has done here, no objection was made or ground of appeal on this point filed and it would seem only to have been noticed and raised in the course of this appeal; I find no substance in this point.

The following grounds (3, 4, 5 and 6) deal with possession and the submission of no case. The two subjects are correlated for the strongest evidence of possession came from the accused in his defence. The Magistrate overruled the submission of no case whereupon the appellant elected to make an unsworn statement from the dock; it commenced :—

"On 23rd of May, 1949, at about 10.00 a.m. one male Chinese, Lee Kwang How handed to me three packages with a sealed letter. I was told that they were very valuable and that they were to be delivered to Beh Chang Moh who was at that time staying at the same address as myself in Penang."

Mr. Hogan argued that if a *prima facie* case is not made out then at the close of the prosecution the Magistrate must acquit. That I think is established by *Public Prosecutor v. Chin Yoke*[1] but learned Counsel took this further; he submitted that subsequent evidence cannot alter the position — no matter how culpable the defence exposure, if no *prima facie* case existed at the close of the prosecution any later evidence even amounting to a confession should be disregarded on appeal and an acquittal entered.

The position in Malaya, Mr. Hogan continued, must be distinguished from law English, Indian or that prevailing in other parts of the Commonwealth and Empire. He conceded that elsewhere an accused person taking a further part in the proceedings during the course of which evidence be adduced which sustains a conviction, may be convicted thereon *Rex v. Power*[2] but not in Malaya.

Mr. Boyle, Deputy Public Prosecutor argued to the contrary. He argued with much force of reason and justice; and from one aspect it seems absurd that if in defence an accused person so inculpates himself as to render conviction inescapable that he must be acquitted and discharged if on appeal it is held that at the close of the prosecution no *prima facie* case had been established.

But I find Mr. Boyle wrong in so far as Malaya is concerned. Elsewhere if at the close of the case for the prosecution an accused or his Counsel make a submission of no case which is wrongly overruled then if either the accused or Counsel take part in subsequent proceedings an appeal against a conviction resulting from such proceedings may fail. The only remedy open to the defence in such circumstances is to take no further part in the proceedings. In Malaya it is the law that the Magistrate *shall* record an order of *acquittal;* not so under the Indian Penal Code (14 *Sohoni* 538) where not more than a *discharge* is required, by which I presume the accused might be called upon to face further trial. There is no reported case I can find on the position if subsequent proceedings follow a wrong decision to acquit at the close of the prosecution and in the defence the accused is inculpated that such subsequent evidence may be relied upon to convict.

But in this case the general circumstances of the discovery of the articles, the conduct of the appellant, and the letter Exhibit P-9 found on his person leave in my mind no question of the duty of the Magistrate to have called upon the defence. I do not agree with the Magistrate that *mens rea* is immaterial; there must

be some and sufficient evidence connecting an accused with possession, and I find there was such evidence.

The accused (here the appellant) was called upon for his defence, but he did not elect to give evidence on affirmation and subject himself to cross-examination; he made the unsworn statement from the dock already set out above. This statement was the only defence, no defence witnesses entered the box.

This quite definitely incriminates the appellant. He admits possession of the packages proved to contain the articles in question. It entirely concludes possession and intent.

I have thus disposed of the grounds of appeal 1 to 6 and the next point is whether the articles fall within the description set out in the Proclamation. In so far as the second charge is concerned there is no doubt; the Proclamation states "Diamond set jewelry." And the exhibits I have seen clearly contain such articles. It might have been better to have tabulated such articles separately, but they exist and are before this Court.

With regard to the first charge the prosecution simply states "gold", and Mr. Hogan submitted that this must be distinguished from jewelry. I do not agree. In whatever form gold is brought into this country it must be under licence, not only if in bulk but whether in the form of jewelry, coin or wrought for commercial or any other use.

It would be absurd if a smuggler may evade the law by simply bringing into Malaya gold in a manner other than its natural state.

Much argument was heard on the submission that the articles were personal effects and so not subject to declaration.

I think that if the articles had been of the character, quantity and nature normally associated with an individual and on his person, then this prosecution would not have been instituted. No rational Customs Officer would proceed against a person for importing gold if that person wore a gold signet ring or had in his pocket a gold watch; but it is a very different matter where a large quantity of articles many made of gold are discovered in a secret hiding place. Furthermore the appellant never submitted in the Court below that the articles were his personal property; on the contrary the letter Exhibit P–9 shows they were not.

The next ground argued was 7, and I agree with it; indeed it is the law, and indeed in this case possession was emphatically conscious. I disagree with the Magistrate when he states in his grounds of decision that the question does not call for attention, but the facts of the case show quite clearly that the appellant admitted possession.

Grounds 8, 9 and 10 were argued together. The first of these I have dealt with. As regards grounds 9 and 10 they follow; I find that the articles were within the Proclamation and prohibited. As the learned Deputy Public Prosecutor submitted it is a matter of fact and I see no reason to reverse the Magistrate's decision on these grounds. If the appellant had desired to prove the articles were not his own personal property but those of the wife of Beh Cheng Moh the defence could have called this lady, but I do not see how this could have availed him.

On ground 11 there seems to have been a misunderstanding between Counsel. Mr. Hogan had argued at length on the submission of no case covering the whole case against the appellant. The record does not state, as it is advisable so to do, the close of the defence, and simply goes on to the address of the Deputy Public Prosecutor. Mr. Boyle has in this Court said that at this stage and before addressing he inquired from Mr. Hogan whether he wished to speak and understood the negative, thereupon he (Mr. Boyle) proceeded to address. There is nothing on the record to show that Mr. Hogan sought further audience, either before or after the address of the Deputy Public Prosecutor, except to speak in mitigation, but in this Court Mr. Hogan complains that he was denied a hearing.

I cannot but pay regard to the record. Nor can I agree that defending Counsel has a right to reply to a proposition of law submitted by the Deputy Public Prosecutor in his closing address. The prosecution was entitled to the last word, and I know of no authority permitting defence Counsel to rejoin.

In any event the proposition that it was unnecessary to prove *mens rea* and possession to which Mr. Hogan desired to reply I have decided in his favour so after full survey of all the case I do not find any injustice caused to the appellant even had Mr. Hogan's argument been acceptable to me, which it is not.

As regards grounds 12, 13 and 14 it seems to me unfair to expect in a Magistrate's Court more expert evidence of the quality of the articles than was adduced by the 8th prosecution witness Yee Siak Khoon. Some sense of proportion must prevail. Yee Siak Khoon has been a goldsmith for twenty-two years; the term "clerk" is a misnomer, it is accepted in this country as synonymous with assistant, in the same way as I

believe it is used in the United States of America and other parts of the world. The Court below saw the articles, and I cannot see how any other sensible conclusion could have been arrived at other than the acceptance of the evidence proving gold and diamonds.

Ground 15 I cannot find was seriously argued, so I proceed to grounds 16, 17 and 18. They are in the alternative and I have paid great regard to the case of *Tham Chuan Tong and two ors. v. Rex*[3]. This of course refers to the law of the Straits Settlements, and I have to consider its applicability to Enactment No. 27 (Customs). Comparison of the two enactments show they are fundamentally the same; they differ in the main from section 186 of the Customs Consolidated Act, 1876, in that the last named is in one continuous paragraph whereas the two first enactments are set in paragraph by paragraph.

Mr. Hogan relies strongly on the judgment of Carey, J. in the case of *Tham Chuan Tong and two ors. v. Rex*. Unfortunately this judgment is very brief, and does not assist greatly in probing the reasons. The principal portion of the judgment concerns the applicability of the word "knowingly" in sub-section (h) to sub-section (a) of section 91. Carey, J. felt himself bound by the case of *Frailey v. Charlton*[4] and I should be very sorry to be compelled to differ from my learned brother; but I do not find myself called upon to conclude this point; I find the appellant in fact acted knowingly; the secreting of the articles alone supports this. I do not agree that the intent must be to evade duty; I consider that if the appellant was concerned with the importation of prohibited goods he is rightly convicted whether or not the goods were dutiable.

But *Tham Chuan Tong's case* is relied upon by Mr. Hogan for a much closer issue — that of penalty — and the substance of grounds 16, 17 and 18 is that punishment should have been under the much lighter section 95 rather than 91 of Enactment No. 27 (Customs).

In my view every case must be considered separately. For reasons not apparent in the judgment Carey, J. held that fines in *Tham Chuan Tong's case* should be imposed under section 118 and not 114 of Customs Enactment, 1936. These sections correspond with sections 91 and 95 of Enactment No. 27 (Customs). I cannot know the reason which operated or the facts which formed the decision to fine under section 118 of the Customs Enactment, 1936. In the appeal before me the fines seem properly imposed in accordance with section 91 of Enactment No. 27 (Customs). Section 95 applies where no penalty is expressly provided; in this case the appellant was found guilty of contravention of section 91 (a) and I find the fines properly imposed by virtue of the concluding paragraph of section 91.

As regards grounds 19 and 20, that there is only one offence, it is true that the articles were in one consignment, but that does not make it one offence. Opium might have been in the same consignment but could not be held as one offence with the articles subject of the charge. There were two counts, one concerned gold and the other diamonds; both were for contravening the Prohibition of Imports Order, 1946; this prohibits the import of certain goods except under and by virtue of an Import Licence; there was no such licence. There were two findings and two punishments. I see no reason to hold the Court below wrong in not holding them joint. The only criticism I have of the sentences is that the imprisonment in default is concurrent and I construe that to be that imprisonment in default of payment of the fines should not exceed six months' rigorous imprisonment. The imprisonment should be separate for each default, but I am not constrained to make any alteration. Incidentally the charge also includes section 98 of Enactment No. 27 (Customs), there was no attempt and the point was never raised.

The next ground is 21. I cannot agree that the mere fact of the appellant being the first to commit an offence of this nature or that he was a first offender should entitle him automatically to leniency. I find too much stressed in mitigation generally that the accused if a first offender is entitled to leniency. Each punishment is assessed on the facts and circumstances of the case, if the accused is a first offender it will be considered by the Court, but no right or privilege can be demanded because an accused has not before been convicted of such an offence. The Magistrate assessed the fines as he is enabled to do by law and I am unable to interfere.

Grounds 22, 23, 24 and 25 may be considered jointly. I have considered the law and the cases cited. Section 77 of Enactment No. 27 (Customs) provides for notice to be given by the seizing officer to the owner of the conveyance or goods seized. In this case due notice was served and furthermore the parties were required to attend. It seems to me reasonable that this having been done the owners should have been heard before forfeiture is declared. It would be better if Enactment No. 27 (Customs) included procedure to be followed. Mr. Hogan pointed out the difference

between section 202 of the Customs Consolidation Act, 1876, and Enactment No. 27 (Customs); in the former forfeiture is mandatory, in the latter it is permissive and I agree that the Magistrate in exercising such power must use judicial discretion. This, as Mr. Hogan emphasised, cannot be done unless the owners are permitted to be heard. I have already held to this effect in *Lim Geok Ching and anor. v. Public Prosecutor*[5] and although that was a case under the Opium and Chandu Proclamation, 1946, I think the same principles apply. It would be different if forfeiture was automatic, but section 94 (3) of Enactment No. 27 (Customs) does not so insist, it uses the words "shall be liable to seizure". I have not omitted to regard the powers contained in section 78 of Enactment No. 27 (Customs) reserved to the High Commissioner, but this is an overriding power covering all forms of seizure; I do not agree with Mr. Boyle that this constitutes the only avenue by which an owner may seek relief. I therefore consider the owners should be given opportunity to show cause why the vehicle (Exhibt P–2) and the articles (Exhibit P–4 and 5) should not be forfeited.

This concludes the grounds. The conviction and sentence of the Court below is upheld, but the order for forfeiture is set aside. The seizure remains but the claimants-owners of the vehicle (Exhibit P–2) and the articles (Exhibits P–4 and 5) are to be required to appear before the Magistrate to show cause why forfeiture should not be ordered.

*Order accordingly.*

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## S. K. MOHAMOODHU & CO.
v.
## G. A. KHUMREE & CO.

[Court of Appeal (Pretheroe, Ag. C.J., Russell and Briggs, JJ.) August 30, 1950]

[F. M. — Civil Appeal No. 21 of 1950]

*Debtor and Creditor (Occupation Period) Ordinance, 1948 — Judgment obtained in Japanese Court on pre-occupation debt — Merger of debt — Judgment debt paid in full during occupation — Whether payment discharges the debt — Japanese Judgments and Civil Proceedings Ordinance, 1946.*

In this case the respondents had sold certain goods to the appellants to the value of $866.55 prior to the Japanese occupation. During the occupation the respondents obtained judgment against the appellants and later during the occupation the amount of the judgment and costs were paid by the appellants to the respondents. In March 1950 the respondents applied to a Judge in Chambers under section 5 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, for an order that a judgment of the High Court be substituted for the Japanese judgment. Jobling, J. held that the amount paid by the appellants must be revalued in accordance with the Debtor and Creditor (Occupation Period) Ordinance, 1948, and that a judgment of the Court for the balance found to be due after revaluation be substituted for the judgment of the Japanese Court. The appellants appealed.

Held, (1) that the pre-occupation debt had merged in the judgment debt and that this judgment debt was an occupation debt for the purposes of the Debtor and Creditor (Occupation Period) Ordinance, 1948; (2) that the debt in this case was therefore fully discharged by the payment made by the appellants.

*Cases referred to:—*

(1) *European Central Railway Company, ex parte Oriental Financial Corporation* 4 Ch. D. 33.

(2) *Florence v. Jennings* 2 C.B. (N.S.) 454 at p. 466.

APPEAL from an order of Jobling, J. reported in (1950) M.L.J. 206.

*Ong Huck Lim* for the appellants.

*Sir Husein Abdoolcader* and *T. E. Conaghan* for the respondents.

*Cur. Adv. Vult.*

**Pretheroe, Ag. C.J.:** — The facts of this case can be stated very shortly. Before the Japanese occupation the respondents to this appeal sold and delivered certain goods to the value of $666.55 to the appellants. During the occupation the respondents obtained judgment against the appellants in this amount and costs which were taxed and allowed at $88.70. This judgment was dated the 12th October, 1943, but the respondents took no steps to enforce it, and on the 23rd June, 1945, the appellants paid to respondents the amount of the judgment and costs.

In March, 1950, the respondents applied to a Judge in Chambers under section 5 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, for an order that a judgment of the High Court be substituted for the Japanese judgment mentioned above.

The learned Judge held that the original, or pre-occupation, debt had merged in the judgment debt but further decided that, under sub-section (5) of section 5 of the Ordinance, the amount paid in satisfaction of the debt and costs should be revalued under the Debtor and Creditor (Occupation Period) Ordinance, 1948, and a judgment of the High Court should be substituted for that of the Japanese Court in respect of the balance then found due. From this decision the appellants appealed to this Court.